



UTAH DEPARTMENT OF COMMERCE DIVISION OF SECURITIES

NEWSLETTER

APRIL 2006

Top Ten Investment Scams

On January 1, the Division released its prediction of the top ten investment scams for 2006. The list includes the scams that are most prevalent, but also identifies some emerging schemes that merit attention. The top ten are:

1. *Instant Messaging Stock Tips.* Promoters of penny stock companies send text messages purporting to contain inside information about company performance, seeking to move stock prices up. When the price moves up, the promoters sell and the price collapses.
2. *Iraqi Currency.* Newspaper advertisements are offering the sale of Iraqi currency, touting the profit potential if the dinar appreciates to pre-war price levels. Until the currency's value floats and is freely traded by brokers, it can be redeemed only in Iraq.
3. *Antique Foreign Bonds.* Investors are encouraged to beware of sellers claiming to have bonds issued by other countries in the 1930's which are still valid. The bonds have expired.
4. *Advance Fee Schemes.* Businesses are offered large loans at low rates, after payment of an advance fee. Ultimately, no loans ever materialize. As described below, several administrative and criminal enforcement actions have been

brought by the Division.

5. *Fake Regulatory Agencies.* Some scam promoters have created bogus investment-related "regulatory" web sites to add legitimacy to their pitches. Viewers are led to believe they are dealing with a legitimate regulator vouching for a particular investment or broker.
6. *Promissory Notes/Factoring.* Promissory notes continue to make up about half of our enforcement cases. Many are offered by sellers licensed in other fields, supplementing their income. The companies issuing the notes generally lack any substantial operations. Recently, factoring of accounts receivable has become more prominent – and often involve fraudulent practices.
7. *Foreign Currency Trading.* Radio and infomercial advertisements seek to persuade unsophisticated investors they can make huge profits buying and selling currencies in the Forex market. Promoters profit by offering execution and selling software programs that indicate when to buy or sell.
8. *Senior Specialists.* Some salespersons have begun calling themselves senior specialists to gain more credibility when selling financial products to seniors. In most cases, there is no special training or the training is merely instruction on how to be more effective at scaring seniors into

following the salesperson's advice.

9. *Prime Bank Frauds.* We continue to see prime bank investments pitched, despite years of enforcement actions that prove there is no such thing as a prime bank and that these investments are scams.
10. *Affinity Fraud.* Fraudsters target victims of a particular church, ethnic group, or community organization with a special offer just to "people like us." The promoter often joins the group to gain the trust of others.

The Division hopes the securities industry and members of the bar will recognize these and other scams so investors will not be deceived into handing over their money. Please notify the Division if you are aware that a client has been solicited for one of the schemes described here or if you see other investment practices that cause you concern.

Caution Against Inflating Production Levels

The Division cautions brokers against the practice of inflating their production. Some brokers inflate their twelve-month production before leaving one broker-dealer for another with the goal of getting a higher up-front bonus or forgivable loan from the new broker-dealer. All securities transactions by brokers for customers must be done only when in the best interests of the customer. A broker who engages in transactions for the purpose of increasing annual production levels is violating customer trust and may be the subject of enforcement sanctions.

Statistical Information

Licensing Activity	This Quarter	Mar. 31 Total
Broker-dealers	52	1,646
Broker-dealer agents	3,902	71,065
Investment advisers (state)	5	885
I.A. representatives	277	2,634
Issuer agents	3	63
Filing Activity		YTD
Coordination registration	31	31
Qualification registration	0	0
Mutual funds/UITs	1,105	1,105
Reg. D. filings	212	212
Exemption filings	12	12

Private Placements, Rule 506 Offerings

We remind firms and attorneys that offerings made in Utah under Rule 506 of SEC Regulation D can only be made if notice of the exemption is filed with the Division within 15 days after the first sale in Utah. If no such notice filing is made, there is no exemption. Utah Rule R164-15-2 has this filing requirement and explains what must be included in the notice filing.

Moreover, issuers need to be very careful about advertising. Private placements must be offered and sold "privately." No "general solicitation" is allowed. General solicitations occur if the promoters talk to the press about their intention to make an offering or raise money for a new fund. Similarly, web sites are sometimes created to distribute information to anyone who may be interested. Press interviews and public web sites are

deemed general solicitations. This gives investors a right to rescind their investment and may result in enforcement action by the Division.

Web Site Resources

You and your clients should be aware of the wealth of resources available on the Division's web site, www.securities.utah.gov. The web site information is designed to help investors, licensed professionals, and securities attorneys. Helpful information on the site includes:

1. The Utah Securities Act and Rules.
2. Press releases issued by the Division regarding enforcement actions taken and investor warnings.
3. Tips for investors in avoiding fraud and selecting a broker.
4. Statistics showing the number of licensees, registered offerings, and enforcement actions.
5. Copies of enforcement orders issued by the Division.
6. Forms used in making filings and the schedule of fees.
7. A table showing the availability of various securities exemptions for companies seeking to raise capital.

We invite your suggestions on ways to make the web site more useful. Please let us know what additional information you would like to see on the site.

Enforcement

The enforcement actions initiated or concluded during the first quarter of 2006 are listed below. Copies of enforcement orders entered by the Division can be found at www.securities.utah.gov.

Anatomy of a Sting A "sting" operation conducted by Division investigators in early March illustrates the types of investment schemes being promoted and the persistence of fraud promoters. In 2001, the Division brought an action against Janelle Moore Garner, of Ogden, for selling promissory notes in her company, Attitude Adjustment Factory (AAF). AAF supposedly teaches mental tools that nurture positive interaction between parents and children. Garner told investors that AAF products were in the process of being purchased by Utah schools. The Division ordered Garner and AAF to cease soliciting investors in violation of the securities laws.

Despite the existence of the 2001 Order, Garner continued soliciting investments, selling convertible promissory notes. On December 28, 2005, Garner was charged with six felonies including selling unregistered securities, violating a cease and desist order, three counts of securities fraud, and racketeering. A hearing was set for March 2 in the criminal case.

A week before the criminal hearing, the Division was contacted by an investigator from the Pennsylvania Securities Commission. The investigator had contacted Garner, pretending to be an investor and was solicited to invest in AAF. Pennsylvania contacted us after seeing that we had issued a cease and desist order and that criminal

charges had been filed. With the permission of the Pennsylvania investigator, Division investigators contacted Garner pretending to be the potential investors from Pennsylvania. The investigators said they were flying to California and had a stopover in Salt Lake. They asked if Garner could meet them at the Salt Lake airport. She agreed.

The meeting took place on March 1. Investigators made an audio recording of the meeting and received the assistance of airport security officials in training security cameras on the meeting in the airport concourse.

At the court hearing the next day, Division investigators surprised Garner by showing up at the hearing and revealing their true identities. Prosecutors from the Attorney General's office informed the judge that Garner was continuing to solicit investor funds despite the cease and desist order and the pending criminal case. Judge Steven L. Hansen turned to Ms. Garner and said: "I will give you a few moments to say goodbye to your friends, then you will be taken into custody."

Thus, jail became the ultimate "attitude adjustment factory."

Summary of Actions

Jan. 5, 2006 A cease and desist order was entered, by default, against **Qorusoft, Inc.** and **Peter G. Polschak** of Salt Lake City for taking \$950,000 from an investor, claiming Polschak would use the money for start-up operations for Qorusoft. A \$100,000 fine was imposed. Polschak currently is a fugitive on a related criminal charge. Docket No. SD-05-0059.

Feb. 3, 2006 An order to show cause was initiated against **Monarch International Holdings, Inc.** and its president **Dale Allen Jones**, of Murray. The case alleges the two solicited \$20,000 from an investor claiming the money would triple in a mutual fund in 30 days. Instead, the money was used for business expenses of Monarch and paid in cash to Jones. Criminal charges were filed the following month. Docket No. SD-06-0002.

Feb. 6, 2006 **Michael A. Espinoza**, of Massachusetts, was sentenced to up to 15 years for defrauding Utah investors. He also was ordered to pay \$324,765 in restitution. He pleaded guilty to three felony securities violations for selling promissory notes and factoring agreements in Echo Tek Communications. Espinoza used investor funds for personal expenses and never disclosed his prior criminal convictions.

Feb. 7, 2006 A petition was issued to revoke the securities license of **Richard E. Haskell**, of Sandy. He is an agent of World Group Securities. The petition alleges he borrowed \$25,000 from an investor, issuing promissory notes promising 24% interest. He also failed to disclose outstanding judgments and a tax lien. The case is pending. Docket No. SD-06-0007.

Feb. 10, 2006 An order to show cause was filed against **Kevin Lawrence Wright**, of Washington County, and **Michael Stephen Hurst**, of Davis County for their participation in an equity-skimming scheme. They are accused of persuading an investor to purchase a Bluffdale home for \$590,000, but obtain loans for \$810,000. A large portion of the equity was to be put into an investment fund, but actually was used to pay prior debts of Wright and for a diamond investment by

Hurst. The investor was not told about unpaid judgments and delinquent taxes. The case is pending. Criminal charges were filed on March 3. Docket No. SD-06-0008.

Feb. 10, 2006 **Anthony Gonzales**, of Tarzana, California, consented to a cease and desist order and will pay a \$1,500 fine for selling unregistered stock to a Utah resident. Gonzales provided misleading information to the investor and investment documentation was falsified. This closes a case started in 2002. Docket No. SD-06-0069.

Feb. 10, 2006 **James Melvin Hardman**, of Salt Lake City, consented to an order in which he admitted violating the law, a \$5,000 fine was imposed, and he was ordered to cease and desist violating the law. He took \$20,000 from a victim promising 10-25% profit each day in a guaranteed investment. In reality, the money was used for Hardman's personal expenses. Hardman had pleaded to two felonies in December 2005 for this conduct. Docket No. SD-05-0024.

Feb. 10, 2006 An order was entered by consent against **Precision Management Associates, LLC, GBC Management LLC**, and its managers, **Lance Garvin**, and **Micah Brooks**, of Cedar Hills, Utah. Precision Fund is an investment fund that pools money from investors. The Respondents admitted offering investments without registering the fund's securities and without the advisers being licensed as investment advisers. They will pay a \$5,000 fine, return management fees, offer rescission and become licensed before accepting new investments. Docket No. SD-06-0003.

Feb. 13, 2006 **David A. Settle**, of Nephi, Utah consented to an order that he be barred

from the securities industry and pay \$50,000 in fines and restitution. Settle admitted that he withdrew \$58,000 from mutual fund accounts of customers and kept it. Waddell & Reed fired Settle and paid restitution to the clients. Docket No. SD-05-0066.

Feb. 27, 2006 Felony charges were filed against **Bryan L. Pendleton**, of Spanish Fork, for stealing monies from securities clients. He was charged with three counts of theft and one count of communications fraud. Between 2000 and 2004, Pendleton took more than \$20,000 from three customers, using the funds for personal and business expenses. His license previously was revoked by the NASD. His broker-dealer repaid the customers and Pendleton has reimbursed the firm.

Feb. 28, 2006 An order was approved by the Securities Advisory Board in which **Bryan Pendleton** was barred from the securities industry and will pay \$50,000 in fines and restitution. Pendleton consented to the order. Docket No. SD-05-0044.

Feb. 28, 2006 **Round Hill Securities**, of Alamo, California, consented to an order imposing a \$25,000 fine and will implement special supervisory procedures. The order recites how a Round Hill broker made unsuitable recommendations to a Utah customer, conducted excessive trading, and failed to disclose the fees being assessed. A \$41,000 account generated \$18,000 in commissions in two years, dropping the account value to \$14,000. A second account lost \$95,000 out of \$150,000 deposited. The firm repaid the customer's losses. A separate action to bar the broker from the securities industry is pending. Docket No. SD-05-0023.

Feb. 28, 2006 An order to show cause was issued against **American Dairy.com, A. Paul Schwenke**, and **Jamis M. Johnson**, all from the Salt Lake area. Schwenke was president and Johnson was CEO of American Dairy. The Division alleges that Schwenke and Johnson persuaded owners of a dairy in rural Utah to exchange their ownership in the dairy for stock in American Dairy. The investors were not told that both Schwenke and Johnson had been disbarred as lawyers for taking client funds and did not disclose their prior business losses or large tax liens. American Dairy made no payments on the existing dairy loan and Schwenke borrowed an additional \$50,000 using the dairy's assets. The bank foreclosed on the property and evicted the owners. The case is pending. Criminal charges also are pending against Schwenke and Johnson. Docket No. SD-06-0010.

Mar. 2, 2006 Six felony criminal charges were filed by the Utah Attorney General against **William Ray Clemons**, of Salt Lake City. The state alleges Clemons took \$22,000 from fellow church members, saying their money would be pooled with others, be invested in a mutual fund, and earn a 10% profit. Clemons currently is in jail serving a sentence for unlawful use of a credit card.

Mar. 3, 2006 The Attorney General filed criminal charges against **Kevin Lawrence Wright**, of Washington County, and **Michael Stephen Hurst**, of Davis County for their equity-skimming real estate scheme. Each was charged with one count of securities fraud and one count of theft. This follows a February 10 order to show cause issued by the Division.

Mar. 13, 2006 **Zell Lou Mills**, of South Jordan was sentenced to up to five years in

prison and was ordered to pay \$185,167 in restitution. Mills had pleaded guilty to three felony charges of securities fraud in a case brought by the Attorney General. He had sold stock to IHC employees, but never delivered the stock, and took \$160,000 from other investors for an investment program promising to double their money in three months. He did not tell investors that he had two prior criminal convictions, had declared bankruptcy twice, and had 44 unpaid judgments against him.

Mar. 16, 2006 Criminal charges were filed by the Attorney General against **Dale Allen Jones**, of Murray. Jones took \$20,000 from an investor in 2004 promising to return \$60,000 in 30 days. Jones falsely claimed the investment would be put into Vanguard and said it was 100% guaranteed. In reality, the money was used for Jones's business and personal expenses. Proceedings to impose a cease and desist order also are pending.

Mar. 22, 2006 An order was entered against **Stephen W. Nebeker**, of Salt Lake City in which Nebeker admitted he made unsuitable recommendations and engaged in unsuitable trading in customer accounts. While he was a licensed broker with Round Hill Securities (which consented to an order in February), Nebeker engaged in improper trading in the account of a retired widow, causing her to lose \$123,000 of her \$191,000 investment. Meanwhile, \$59,000 in commissions and fees were charged. Nebeker was barred and a fine of \$20,000 was assessed, but waived based on his impecuniosity. Docket No. SD-05-0021.

Mar. 28, 2006 Proceedings to impose a cease and desist order were initiated against **The Millionaire Investor Group, Inc. (TMIG)** of Draper and **Daniel D. Debenham** of Sandy.

The order to show cause alleges TMIG and Debenham solicited \$159,773 from three investors for real estate speculation, saying their money would be used as down payments to purchase homes that would be remodeled and sold – or flipped – at a profit. While investors were told their investments were secured by real estate, they were not listed as lien holders. In fact, none of the money was used to purchase homes; rather, it was used to pay mortgages on existing properties, pay TMIG operating expenses, and pay personal expenses of Debenham. A hearing is set for May. Docket No. SD-06-0013.

Mar 29, 2006 An order was entered against **Stephen Poulter**, of North Salt Lake, and **Boston Financial**, of Salt Lake City for investment advisory violations. An examination conducted by the Division in 2005 revealed that Boston and Poulter provided investment advice without the requisite license, shared compensation with unlicensed persons, failed to maintain books and records, did not satisfy bonding and minimum net worth requirements, and improperly charged performance-based fees. Boston and Poulter admitted the violations and consented to the entry of a cease and desist order and to be barred from the securities industry. Docket No. SD-05-0011.